

KOBAYASHI, SUGITA & GODA

Lex R. Smith 3485-0

Thomas H. Yee 7344-0

First Hawaiian Center

999 Bishop Street, Suite 2600

Honolulu, Hawaii 96813

Telephone No. (808) 539-8700

Facsimile No. (808) 539-8799

Email: lrs@ksglaw.com

KIRKLAND & ELLIS LLP

Michael E. Baumann (CA Bar No. 145830)

777 South Figueroa Street

Los Angeles, CA 90017

Telephone No. (213) 680-8400

Facsimile No. (213) 680-8500

Email: mbaumann@kirkland.com

Counsel for Defendant

POST-CONFIRMATION TRUST

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;

Plaintiff,

vs.

HAWAIIAN EXPRESS SERVICE,
INC., et al.,

Defendants.

) CIVIL NO. CV03-00385 SOM-LEK

) (Copyright)

)

) **DEFENDANT PCT'S RESPONSE**

) **TO PLAINTIFF WAYNE BERRY'S**

) **EX PARTE MOTION**

)

) Non-Hearing

)

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**DEFENDANT PCT'S RESPONSE TO
PLAINTIFF WAYNE BERRY'S EX PARTE MOTION**

In his *ex parte* motion, Berry alleges that the PCT violated this Court's November 29, 2006 order and/or applicable rules by (i) filing its objection to the Special Master's Report more than 10 days after it was issued and (ii) filing a response to Berry's objection to the Special Master's Report. With respect to the first charge, Federal Rule of Civil Procedure ("FRCP") 53(g)(2) permits a party to file a motion to amend or modify a Special Master's report, or an objection to a report, within 20 days of its issuance. The Special Master issued her report on December 4, 2006. The PCT filed its objection on December 22, 2006 -- 18 days after the report was issued and within the time FRCP 53(g)(2) permits. With respect to Berry's second charge, Local Rule 7.4 permits a party to file an objection to a motion (or in this case Berry's objection, which under FRCP 53(g)(2) is synonymous with a motion to amend or modify the Special Master's report) 18 days before a scheduled hearing. The hearing to consider Berry's objection to the Special Master's report is set for February 26, 2007. While the Court's November 29, 2006 order instructed the parties not to file reply briefs, it did not forbid objections/responses to a party's FRCP 53(g)(2) filing.

The PCT has complied with all applicable rules and court orders.

DATED: Honolulu, Hawaii, February 12, 2007.

/s/ Thomas H. Yee

KOBAYASHI, SUGITA & GODA

Lex R. Smith (659-0)

Thomas H. Yee (7344-0)

Suite 2600 First Hawaiian Center

999 Bishop Street

Honolulu, HI 96813

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Facsimile: (808) 539-8799

and

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Los Angeles, CA 90017

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Co-Counsel for the Post Confirmation Trust for
Fleming Companies, Inc.